

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

OPTO GENERIC DEVICES, INC.,

Plaintiff,

-v-

AIR PRODUCTS & CHEMICALS, INC.,

Defendant.

DAVID N. HURD
United States District Judge

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

SEP 15 2008

LAWRENCE K. BAERMAN, Clerk
UTICA

6:08 -CV-234

ORDER

Pursuant to the oral decision of the Court, entered into the record after hearing oral argument on September 12, 2008, in Utica, New York, it is hereby

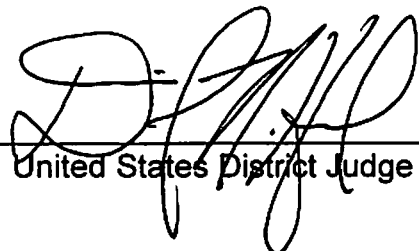
ORDERED that

1. Defendant's motion to dismiss Count 4 is GRANTED;
2. Count 4 of the Complaint is DISMISSED without prejudice and plaintiff may file an Amended Complaint containing a properly pled fraud cause of action on or before September 26, 2008;

3. Defendant's motion to dismiss Counts 5 and 6 is GRANTED;

4. Counts 5 and 6 are DISMISSED.

IT IS SO ORDERED.


United States District Judge

Dated: September 12, 2008
Utica, New York.